

1085  
United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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MARYLAND CASUALTY COMPANY, a Corporation of the State of Maryland,  
Plaintiff in Error,  
vs.

PACIFIC COUNTY, a Municipal Corporation, and  
One of the Counties of the State of Washington, and J. L. GLAZEBROOK, as County  
Treasurer of Said Pacific County,  
Defendants in Error.

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Transcript of Record.

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Upon Writ of Error to the United States District Court of the  
Western District of Washington, Southern Division.

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Filed

MAR 20 1917



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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CHARLES T. PETERSON, Esquire, National Realty Building, Tacoma, Washington, and

JOHN I. O'PHELAN, Esquire, Raymond, Washington,

Attorneys for Plaintiffs and Defendants in Error. [1\*]

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*In the United States District Court, for the Western District of Washington, Southern Division.*

No. 1949.

PACIFIC COUNTY, WASHINGTON,

Plaintiff,

vs.

MARYLAND CASUALTY COMPANY,

Defendant.

**Amended Praecipe and Transcript.**

To the Clerk of the Above-entitled Court:

You will please prepare and certify, to constitute the transcript of record on appeal in the above-en-

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\*Page-number appearing at foot of page of original certified Transcript of Record.

titled cause, typewritten copies of the following enumerated papers, omitting all captions, verifications, acceptances of service, and other endorsements, except file marks:

1. Complaint.
2. Answer.
3. Reply.
4. Decree.
5. Motion for New Trial.
6. Order Denying Motion for New Trial.
7. Bill of Exceptions and Order Settling Bill of Exceptions.
8. Petition for Writ of Error.
9. Assignment of Errors.
10. Order Allowing Writ of Error.
11. Bond on Writ of Error and Approval Thereof.
12. Order Extending Time for Filing Bill of Exceptions.
13. Stipulation That Certain Exhibits be not Printed.
14. Stipulation for Removal of Certain Exhibits.
15. Bond on Writ of Error.
16. Acceptance of Service.
17. Order of Removal.
18. Decision.

JOHN W. ROBERTS,  
Attorney for Defendant.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jan. 11, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [2]



**Complaint.**

(Originally Filed in the Superior Court of the State of Washington, for Pacific County.)

Come now the plaintiffs in the above-entitled action and complaining of the defendant for cause of action allege:

I.

That Pacific County is now and at all of the times hereinafter mentioned has been a duly, organized and existing municipal corporation of the State of Washington, and one of the counties of said State. That said J. L. Glazebrook is now and at all times hereinafter mentioned has been the duly elected, qualified and acting county treasurer for said Pacific County, Washington.

II.

That the defendant at all of the times herein mentioned was and now is a corporation, duly organized and existing under and by virtue of the laws of the State of Maryland and as such was at all of said times under and by virtue of the laws of the State of Washington duly authorized to do and transact in said State of Washington the business of a surety company and as a bonding company and to become surety on bonds in the State of Washington and to become surety for hire and executing surety bonds, and at such times was and now is engaged in said business in the State of Washington. That at all of the times herein mentioned the First International Bank was and now is a corporation, duly organized and existing under and by virtue of the laws of the State of Washington, and until the 19th

day of July, 1915, had been engaged in a general banking business and conducting a commercial and savings bank in South Bend, Pacific County, Washington.

### III.

That under and pursuant to the laws and statute of the State of Washington the said First International Bank was duly and regularly designated as one of the depositories for the moneys of Pacific County, [3] Washington, and that prior to and including the 19th day of July, 1915, the said First International Bank was duly designated as one of the depositories of the county's moneys, and prior to said date was one of the county depositories. That on said 19th day of July, 1915, there was actually on deposit in the said First International Bank, a banking corporation, the said county depository, the sum of \$52,497.97 of money and funds of Pacific County, Washington.

### IV.

That on the 9th day of July, A. D. 1915, the said First International Bank, a banking corporation, as principal, and the defendant above named, the said surety company, as surety, made, executed and delivered their bond to the plaintiffs herein in the sum of \$10,000 to secure the sum and amount of the county's moneys and funds to be deposited in the said First International Bank, a copy of which said bond is hereto attached, marked Exhibit "A" and made a part hereof.

### V.

That on the said 19th day of July, 1915, the said

First International Bank, a banking corporation, the said depository, closed its doors and refused to accept deposits or to honor checks drawn upon it or otherwise to transact business, and defaulted in the payment of checks drawn on the said First International Bank by the above-named plaintiff, J. L. Glazebrook, as county treasurer for Pacific County, Washington, and failed and refused to pay said checks and refused to pay said checks so drawn on it as aforesaid, by said J. L. Glazebrook as such county treasurer, after demand duly made on said bank.

#### VI.

That said First International Bank is insolvent and on the 19th day of July, 1915, closed its doors and ceased to do a banking business and actually turned all of its assets and the [4] management of said bank over to W. E. Hanson, the State Bank Examiner of the State of Washington as provided by law. That said W. E. Hanson is the State Bank Examiner of the State of Washington.

#### VII.

That on said 19th day of July, 1915, there was actually on deposit in said First International Bank moneys and funds belonging to Pacific County, Washington, deposited therein by J. L. Glazebrook, as county treasurer for said county, the sum of \$52,497.97, which sum of money and funds were secured by the bond, a copy of which is hereto attached as above alleged. That on said 19th day of July, 1915, the said W. E. Hanson, as State Bank Examiner for the State of Washington, took over the affairs of and actual management of and the

possession of the First International Bank and is now actually in the possession thereof.

### VIII.

That thereafter and on or about the 19th day of August, 1915, the plaintiffs prepared and served defendant above named a proof of loss and proof of default in writing on the party of the First International Bank, and notice that the said First International Bank had closed its doors and refused to accept deposits or to pay checks drawn upon it, and refused to pay checks drawn on it by the above-named plaintiff, J. L. Glazebrook, as county treasurer of Pacific County, Washington, and that on the 19th day of July, 1915, there was on deposit in said First International Bank, a county depository, the sum of \$52,497.97 of the moneys and funds of Pacific County, Washington.

### IX.

That thereafter and on about the — day of ———, 1915, the plaintiffs above named did make demand in writing upon the defendant above named, the said bonding company, for the payment of loss sustained by plaintiffs under the terms and conditions of said [5] bond, which said loss was and is \$10,000.

### X.

That the defendant has failed and neglected and refused and still continues to refuse to pay said loss or any part or portion thereof. And that plaintiffs by reason of the refusal of the defendant to pay the said loss or any portion thereof are damaged in the sum of \$52,497.97, together with interest thereon at

the rate of six per cent per annum from and after the 19th day of August, 1915. And that the defendant, under the terms and conditions of the said bond which is hereto attached is liable to the plaintiffs herein in the sum of \$10,000 with interest at the rate of six per cent per annum from the 19th day of August, 1915, no part of which has been paid, and the whole thereof is now due and owing to plaintiffs as aforesaid.

### XI.

That since the default of the said First International Bank under the terms and conditions of said bond, neither said First International Bank nor its successor, the said W. E. Hanson, as State Bank Examiner of the State of Washington, paid to the plaintiffs the amount deposited by the plaintiffs in said First International Bank, to wit, the sum of \$52,497.97 or any part thereof, and that said sum is now justly due and owing from said bank to plaintiffs herein.

### XII.

That by reason of the failure of the said defendant to pay to plaintiffs the amount of its said bond the plaintiffs were and are damaged in the sum of \$10,000, together with interest thereon at the rate of six per cent per annum from August 19, 1915.

### XIII.

That the sum of \$500 is a reasonable attorney's fee to be allowed to the plaintiffs herein to be taxed as a part of the [6] costs and the penalty of the bond under the terms and conditions thereof.



WHEREFORE plaintiffs pray judgment against the said defendant in the sum of \$10,000, together with interest thereon at the rate of six per cent per annum from and after the 19th day of August, 1915, together with \$500 as attorney's fee. Together with the costs of this suit.

2.

Plaintiffs pray for such other and further relief as to the Court may seem meet and agreeable to equity.

3.

Plaintiffs pray for general relief.

(Signed) JOHN I. O'PHELAN,  
Attorney for Plaintiffs.

(Duly verified.)

**Exhibit "A"—Depository Bond.**

**DEPOSITORY BOND.**

Amount \$10,000.

KNOW ALL MEN BY THESE PRESENTS: That First International Bank of South Bend, Washington, as Principal, and Maryland Casualty Company, a corporation, of the State of Maryland, as surety, are firmly held and bound unto J. L. Glazebrook, Treasurer of the County of Pacific, State of Washington, in the sum of Ten Thousand Dollars (\$10,000) for the payment of which, well and truly to be made, we hereby bind ourselves, our and each of our successors and assigns, jointly and severally, firmly by these presents:

DATED this 9th day of July, A. D. 1915.

WHEREAS, the said principal, First International Bank, has been designated by J. L. Glaze-

brook, Treasurer of Pacific County, as a depository of the current funds in the hands or possession of the said Treasurer J. L. Glazebrook, to be deposited in the said bank; the amount whereof shall be subject to withdrawal or diminution by said Treasurer, as the requirements of said County shall demand, and which amount may be increased or decreased as the said Treasurer may determine, and

WHEREAS, the said Bank, in consideration of such deposit and of the privilege of keeping same, has agreed to pay the County of Pacific, State of Washington, interest on said sum upon the average daily balance the said Bank shall have on deposit for the month or any fraction thereof next preceding and crediting of said interest, which interest shall be computed and credited to the account of J. L. Glazebrook, Treasurer of said County of Pacific, State of Washington, [7] and shall become thenceforth a part of such deposit.

NOW THEREFORE, if the said FIRST INTERNATIONAL BANK shall at the beginning of every month render to the Treasurer of the County of Pacific, State of Washington, a statement showing the daily balance of such County moneys held by it during the month next preceding and the interest thereon, and how the same has been credited, and shall well and truly keep all such sums of money so deposited, or to be deposited, as aforesaid, and the interest thereon, subject at all times to the check and order of J. L. Glazebrook, Treasurer as aforesaid, and shall pay over the same, or any part thereof, upon the check or written demand of said Treasurer,

or to his successor in office, and shall calculate, credit, and pay such interest, as aforesaid, and shall in all respects save and keep the said County and the County Treasurer of the said County, harmless and indemnified for and by reason of the making of said deposit or deposits and shall in all respects comply with House Bill No. 90, entitled "An Act regulating the keeping and deposit of public funds in Banks by the several Treasurers of the State of Washington," passed by the Legislature of the State of Washington at its Tenth regular session, in the year 1907, then this obligation shall be void and of no effect, otherwise to be and remain in full force and effect.

PROVIDED: FIRST, That the Maryland Casualty Company, surety on said bond shall have the right to terminate its liability under this obligation by serving notice of its election so to do upon the said treasurer, and the said surety shall be discharged from any and all liability hereunder for any default of the said First International Bank occurring after the expiration of thirty (30) days after the service of such notice.

SECOND: The Surety shall only be liable for such proportion of the total loss or damage sustained by said obligee, by reason of any default of the Principal embraced within the terms of this bond, as the penalty of this bond shall bear to the total sum of all bonds and securities which may be given to secure the deposits above referred to; and in no event shall the Surety hereunder be liable for any sum in excess of the penalty of this bond.



IN WITNESS WHEREOF we have hereunto affixed our corporate seals and caused this bond to be duly signed, by our respective authorized officers, agents or attorneys in fact, the date and year first hereinbefore written.

(Official Seal)

FIRST INTERNATIONAL BANK.

By J. A. SODERBERG,  
President.

Attest: ELIAS PIERSON,  
Cashier.

MARYLAND CASUALTY COMPANY.

By HENRY C. EORNY and  
JOHN W. ROBERTS,  
Its Attorneys in Fact.

Witnessed:

H. B. KELSEY. [8]

Approved:

JOHN I. O'PHELAN,  
At Prosecuting Attorney.  
J. L. GLAZEBROOK,  
Co. Treas.

[Endorsements]: Filed July 19, 1915. Z. B. Brown, Clerk. Recorded Official Bonds, Vo. 3, page 372.

[Endorsements]: "Filed Dec. 10th, 1915. Z. B. Brown, Clerk. By A. D. Gillies, Deputy."

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jan. 3, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [9]

**Order of Removal.**

(From the Superior Court of the State of Washington for Pacific County.)

This cause coming on for hearing on due notice upon the application of the defendant herein for an order transferring this cause to the United States District Court for the Western District of Washington, Southern Division, and it appearing to the Court that the defendant has filed its petition for removal in due form of law and that said defendant filed his bond, duly conditioned, with good and sufficient surety, as provided by law, and it appearing to the Court that this is a proper cause for removal to said United States District Court, NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that this cause be, and it hereby is, removed and transferred to the United States District Court for the Western District of Washington, Southern Division, and that no further proceedings be had herein except to transmit a certified copy of the record to said court, and the clerk of this court is hereby directed to make certified copy of the record in said cause for transmission to said court forthwith.

Done in open court this 27th day of December, 1915.

EDWARD H. WRIGHT,  
Judge.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jan. 3, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [10]

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**Answer.**

Comes now the defendant Maryland Casualty Company, and for answer to the complaint of plaintiff, denies and alleges:

I.

Answering paragraph II, denies that the First International Bank was, until the 19th day of July, 1915, engaged in a general banking business, and denies that it was at any time after the 16th day of July, 1915, engaged in a general banking business, and denies that said First International Bank was at any time after the 16th day of July, 1915, engaged in or conducting a banking business of any kind.

II.

Answering paragraph III, denies the same and the allegations and averments therein contained.

III.

Answering paragraph IV, denies the same, except as it may be hereinafter qualified, and denies generally the allegations and averments in said paragraph contained, except as the allegations of said paragraph may be hereinafter admitted.

IV.

Answering paragraph V, denies the same, and denies that the First International Bank was open for banking business at any time after July 16, 1915.

## V.

Answering paragraph VI, denies the same, except it admits that W. E. Hanson is the State Bank Examiner for the State of Washington, and admits that said bank was turned over to said W. E. Hanson, but denies it was turned over to him on the 19th day of July, 1915, or at any date later than the 17th day of July, 1915. [11]

## VI.

Answering paragraph VII, denies the same, except that it admits that the State Bank Examiner of the State of Washington is now in possession of the First International Bank and its affairs.

## VII.

Answering paragraph VIII, denies the same.

## VIII.

Answering paragraph IX, admits that the plaintiff did make demand upon the defendant for the payment of \$10,000, and that said demand was and is refused, and denies each and every other allegation in said paragraph contained.

## IX.

Answering paragraph X, admits that it refuses to pay the amount demanded or any part thereof, and denies each and every other allegation and averment in said paragraph contained.

## X.

Answering paragraph XI, admits that it has not paid anything to the First International Bank, and denies each and every other allegation and averment in said paragraph contained.

XI.

Answering paragraph XII, denies the same.

XII.

Answering paragraph XIII, denies the same, and denies that \$500 or any other sum is a reasonable attorney's fee to be allowed, and denies the right of plaintiffs to recover an attorney's fee in this cause.

SECOND.

For a second and further answer, and by way of affirmative defense, the defendant, Maryland Casualty Company, alleges: [12]

I.

That on or about the 9th day of July, 1915, application was made to the Maryland Casualty Company at Seattle, in King County, Washington for the execution of a depository bond, to be executed to J. L. Glazebrook, treasurer of the county of Pacific, with the First International Bank as principal and Maryland Casualty Company as surety thereon, in the sum of ten thousand dollars (\$10,000) and that in pursuance of said application there was executed at Seattle, Washington, on or about the 9th day of July, 1915, a depository bond or instrument, a copy of which is attached to the complaint of plaintiffs.

II.

That said bond was on the 10th or 11th day of July, 1915, mailed from Seattle, Washington, to First International Bank at South Bend, Washington, and the same was received by said J. L. Glazebrook at South Bend, Washington, on the 14th day of July, 1915, and not prior to that date.



## III.

That on the 14th day of July, 1915, said J. L. Glazebrook, in a letter dated and written on the 14th day of July, 1915, but not mailed until a date later than July 14th, 1915, notified the Maryland Casualty Company of the receipt of said bond on that day and that he would not accept nor approve said bond, because the same was not in proper form, and not in a form which the Prosecuting Attorney of Pacific County, Washington, would approve; that said letter was duly signed and executed by J. L. Glazebrook, the obligee named in said bond, and the Treasurer of Pacific County, Washington, and by him mailed to Seattle, Washington.

## IV.

That the said J. L. Glazebrook in addressing the said letter made a mistake and addressed the same to the wrong office in [13] Seattle, Washington, and that because of said mistake in the address, the said letter of J. L. Glazebrook notifying the Maryland Casualty Company that he would not approve nor accept the bond was not delivered to the Maryland Casualty Company or its proper officers or agents until about the 20th day of July, 1915.

## V.

That thereupon the Maryland Casualty Company, on the 22d day of July, 1915, notified the said J. L. Glazebrook, obligee, that it would not execute another or different bond, and that it would not execute a bond in the form suggested and required by said J. L. Glazebrook, and requested said Glazebrook

to return the form of bond which had been mailed to him.

## VI.

That the said First International Bank of South Bend, Washington, while it opened its doors on the morning of July 17, 1915, and kept them open until noon of July 17, 1915, did no banking business on the 17th day of July, 1915; that while said bank on the forenoon of July 17, 1915, did receive a few deposits, the same were not placed into the drawers or vaults of the bank, and were not mingled with the funds of the bank, and became at no time any part of the funds on deposit in said bank, but the officers of said bank, knowing the same to be insolvent, and knowing that it was unable to further do a banking business, kept said deposits separate and distinct, and laid them aside, and at noon on the 17th day of July, 1915, closed its doors and immediately returned to the depositors all of the funds or moneys or property in any manner attempted to be deposited with said bank on the forenoon of July 17, and said bank transacted no business of any kind or character upon the 17th day of July, and received no money or moneys on deposit on the 17th day of July, 1915, and returned to all of the depositors the funds which it had temporarily held during the forenoon of that day. [14]

## VII.

That the officers of said First International Bank, on the 17th day of July, 1915, notified the bank examiner of the State of Washington that it had suspended business, and requested the Bank Examiner

to take immediate charge of said bank, and the officers of the First International Bank were then and there upon the 17th day of July, 1915, notified by said bank examiner that he would take immediate charge and control, possession and management of said bank and of its affairs, and that said bank did no banking business and was not open for banking business after the 16th day of July, 1915, and was surrendered and delivered to the State Bank examiner on the 17th day of July, 1915, and was never at any time open for the transaction of banking business after the 16th day of July, 1915, of all of which the plaintiff J. L. Glazebrook, as county treasurer of Pacific County, Washington, had at all times full knowledge and notice.

### VIII.

That it was well and commonly known and understood in South Bend, Washington, and by J. L. Glazebrook on the said 17th day of July, 1915, that said bank had suspended business and was closed, and that no banking business had been transacted by said bank subsequent to July 16, 1915, and that when said temporary deposits were returned, said depositors were all notified that said bank had suspended and closed, and that it was not open and would not be further opened, and it became and was a matter of common knowledge among the inhabitants and residents of South Bend, Washington, that said bank had closed and suspended business, and was in the hands of the Bank Examiner of the State of Washington.



## IX.

That the bond of the Maryland Casualty Company set forth in the complaint of plaintiff had not on the 17th day of July, [15] 1915, been approved and accepted nor filed, but that on the 19th day of July, 1915, after the suspension and closing of said bank the said J. L. Glazebrook, for the first time, sought to procure the approval of said bond by other officers or representatives of the county, and did on the 19th day of July, 1915, and not before that date, and after the prosecuting attorney and legal adviser of Pacific County had refused to approve said bond and had advised the said J. L. Glazebrook to refuse to approve and accept the same, procure John I. O'Phelan, prosecuting attorney, to indorse his approval thereon, but said approval was not indorsed thereon at any time prior to the 19th day of July, 1915, and was only approved by said John I. O'Phelan on said July 19, 1915, after said John I. O'Phelan, as legal adviser of said Pacific County had rejected said bond and had prior to and up to that time refused to approve the same, and said bond was not approved by any other officer or representative of Pacific County, Washington, and the said J. L. Glazebrook immediately after having procured said indorsement by John I. O'Phelan, prosecuting attorney, filed said bond, on the 19th day of July, 1915, and not before that date.

## X.

That said alleged and attempted approval and filing of said bond after the suspension and closing of said bank was without the knowledge or consent of

the defendant Maryland Casualty Company and said Maryland Casualty Company has never at any time consented thereto, nor in any manner ratified the alleged approval and filing of said bond, and has never at any time acknowledged or admitted any liability or obligation as existing against it on account of said instrument, and alleges that the same never at any time became the bond of the Maryland Casualty Company, as alleged in the complaint, or at all, and that said instrument never at any time became effective as a bond or obligation of the Maryland Casualty Company, '[16]' and that by reason of the premises the same was and is void and of no force and effect as against the Maryland Casualty Company.

WHEREFORE, the defendant Maryland Casualty Company having fully answered the complaint of plaintiff, prays for judgment for dismissal of the same, and for costs.

JOHN W. ROBERTS,  
Attorney for Defendant.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jan. 11, 1916.  
Frank L. Crosby, Clerk. By F. M. Harshberger, berger, Deputy. [17]

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**Reply.**

Comes now the plaintiffs in the above-entitled action and replying to the answer of the defendant, admit, allege and deny as follows, to wit:

1.

Plaintiffs reiterate each and every allegation contained in each and every paragraph of the complaint and the whole thereof.

2.

Plaintiffs deny each and every allegation of new matter contained in the answer of the defendant.

Plaintiffs replying to the second and further answer and affirmative defense of the defendant admit, allege and deny as follows:

1.

Plaintiffs admit paragraph No. One of said answer and affirmative defense.

2.

Plaintiffs deny paragraph No. Two and the whole thereof of said answer and affirmative defense except that plaintiffs admit that on the 12th day of July, 1915, Elias Pierson, the cashier of the First International Bank of South Bend, Washington, delivered to J. L. Glazebrook, as county treasurer, the plaintiff above named, the depositary bond described in plaintiffs' complaint, which was executed by the Maryland Casualty Company and delivered to said J. L. Glazebrook, as county treasurer, by the cashier of the First International Bank, and that the said bond was received by said J. L. Glazebrook as county treasurer in the office of the county treasurer in the county courthouse at South Bend, Pacific County, Washington, on the 11th day of July, 1915, and that said J. L. Glazebrook, as county treasurer, accepted the said bond at said time as a depositary bond.

## 3.

Plaintiffs deny paragraph No. Three and the whole thereof of said answer and affirmative defense save and except that plaintiffs admit that said J. L. Glazebrook, as county treasurer, did write a letter addressed to the Maryland Casualty Company on or about the 14th day of July, 1915. Plaintiffs deny that said J. L. Glazebrook in said letter advised or notified the said defendant that he did not accept or approve the said bond; but did advise the said defendant that he had accepted the said bond and was holding it and would hold it as a depositary bond to cover county deposits deposited in and to be deposited in the First International Bank of South Bend, Washington.

## 4.

Plaintiffs deny paragraph No. Four of said answer and affirmative defense and the whole thereof.

## 5.

Plaintiffs deny paragraph No. Five of said answer and affirmative defense and the whole thereof.

## 6.

Plaintiffs deny paragraph No. Six of said answer and affirmative defense and the whole thereof save that plaintiffs admit that the First International Bank opened its doors and remained open during all of the banking hours on the 17th day of July, 1915, and did a banking business on said day.

## 7.

Plaintiffs deny paragraph No. Seven of said answer and affirmative defense and the whole thereof.

8.

Plaintiffs deny paragraph No. Eight of said answer and affirmative defense and the whole thereof.

9.

Plaintiffs deny paragraph No. Nine of said answer and [19] affirmative defense and the whole thereof except that plaintiffs admit that the said bond was approved as required by law but deny that the same was approved on the 19th day of July, 1915. And in that behalf allege that said bond was approved prior to the time that the said First International Bank suspended business and closed its doors.

10.

Plaintiffs deny paragraph No. Ten of said answer and affirmative defense and the whole thereof.

WHEREFORE, plaintiffs pray judgment as prayed for in their complaint.

JOHN I. O'PHELAN,  
Attorney for Plaintiffs.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. May 24, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [20]

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**Memorandum Decision.**

CUSHMAN, District Judge.

This is a suit upon a bond given to secure county bank deposits. The case was tried to the Court without a jury upon a written stipulation.

The bond is as follows:



“KNOW ALL MEN BY THESE PRESENTS, That First International Bank of South Bend, Washington, as Principal, and Maryland Casualty Company, a corporation of the State of Maryland, as surety, are firmly held and bound under J. L. Glazebrook, Treasurer of the County of Pacific, State of Washington, in the sum of Ten Thousand Dollars (\$10,000), for the payment of which, well and truly to be made, we hereby bind ourselves, our and each of our successors and assigns, jointly and severally, firmly by these presents.

“Dated this 9th day of July, A. D., 1915.

“WHEREAS, the said Principal, First International Bank has been designated by J. L. Glazebrook, Treasurer of Pacific County, as a depositary of the current funds in the hands or possession of the said Treasurer, J. L. Glazebrook to be deposited in the said Bank; the amount whereof shall be subject to withdrawal or diminution by said Treasurer, as the requirements of said County shall demand, and which amount may be increased or decreased as the said Treasurer may determine, and

“WHEREAS, the said Bank in consideration of such deposit and of the privilege of keeping same, has agreed to pay the County of Pacific, State of Washington, interest on said sum upon the average daily balance the said Bank shall have on deposit for the month, or any fraction thereof next preceding the crediting of said interest, which interest shall be computed and credited to the account of J. L. Glazebrook, Treasurer of said County of Pacific, State of

Washington, and shall become thenceforth a part of such deposit.

“NOW, THEREFORE, if the said First International Bank shall at the beginning of every month render to the Treasurer of the County of Pacific, State of Washington, a statement showing the daily balance of such County moneys held by it during the month next preceding and interest thereon, and how the same has been credited, and shall well and truly keep all such sums of money so deposited, or to be deposited, as aforesaid, and the interest thereon, subject at all times to the check and order of J. L. Glazebrook, Treasurer as aforesaid, and shall pay over the same, or any part thereof, upon the check or written demand of said Treasurer, or to his successor in office, and shall calculate, credit and pay such interest, as aforesaid, and shall in all respect save and keep the said County, and the County Treasurer of the [21] said County, harmless and indemnified for and by reason of the making of said deposit or deposits, and shall in all respects comply with House Bill No. 90, entitled “An Act regulating the keeping and deposit of public funds in Banks by the several Treasurers of the State of Washington,” passed by the Legislature of the State of Washington, at its Tenth regular session, in the year, 1907, then this obligation shall be void and of no effect, otherwise to be and remain in full force and effect.

“PROVIDED:

“1. That the Maryland Casualty Company Surety on said bond shall have the right to termin-

ate its liability under this obligation by serving notice of its election so to do upon the said Treasurer, and the said Surety shall be discharged from any and all liability hereunder for any default of the said First International Bank, Principal, occurring after the expiration of thirty (30) days after the service of such notice.

“2. The Surety shall only be liable for such proportion of the total loss or damage sustained by said Obligee, by reason of any default of the Principal embraced within the terms of this bond, as the penalty of this bond shall bear to the total sum of all bonds and securities which may be given to secure the deposits above referred to; and in no event shall the Surety hereunder be liable for any sum in excess of the penalty of this bond.

“IN WITNESS WHEREOF, we have hereunto affixed our corporate seals and caused this bond to be duly signed by our respective authorized officers, Agents, or Attorneys in Fact, the date and year first hereinbefore written.”

On July 9, 1915, the county treasurer's deposits in the bank amounted to \$50,032.07. Saturday, July 10th, the balance was \$50,351.28. Monday, July 12th, the balance is not shown. On July 13th and 14th, \$8,000 of new deposits were made by the treasurer. On Saturday, July 17th, the last day the bank was open, the balance, with interest, was \$52,457.97.

The bond in question is dated July 9, 1915. It was delivered by the insurance broker to the bank and, by the bank cashier to the county treasurer July 12th. The county treasurer testified that it was ap-



proved by him and the county attorney on the same day as delivered to him. The county attorney does not remember when he approved it. It was not filed with the county clerk until after the bank failed to open July 19th. [22]

On Wednesday, July 14th, the county treasurer wrote the defendant at Seattle the following letter:

“In re Bond of First *Internation* Bank.

“We have your depository bond for \$10,000 dated July 9th, 1915, in favor of J. L. Glazebrook, County Treasurer.

“The Prosecuting Atty. refuses to approve any bond carrying the *pro rata* clause, and we ask you to kindly give us a bond in which this item is eliminated, or followed by the following.

“ ‘Provided, however, that if such other bonds or securities are insufficient for any reason to fully make, together with the aforesaid *porpor*sition under this bond, the full amount of interest and principal demanded and refused and interest thereafter accruing to time of actual payment to said Treasurer, then and in that event the surety hereunder shall be liable to said Treasurer to the full amount of loss sustained by reason of such insufficiency.’

“If you will deliver to your agent here a bond as stated above we will deliver the bond we now have to him and take the new bond in lieu thereof.

“If you prefer we promise to return to you immediately the old bond above mentioned as of July 9th upon receipt of new bond corrected to read as stated above.

“Thanking you for your kindness in the above matter, we are,”—

This letter was not answered in any way prior to the bank's failure. Although it did not require a day for the mail to reach Seattle from South Bend, the testimony is that this letter did not reach the department of the defendant in charge of such matters until Monday, July 19th, the day the bank failed to open.

For the defense it is contended that the bond covered only future deposits; that it never was accepted by the obligee, nor the defendant notified of its acceptance and that both latter requisites are necessary to a recovery.

The following statutes of the State bear upon the questions in issue:

“Before any such designation or designations shall become effectual and entitle the said treasurer to make deposits in such bank or banks, the bank or banks so designated shall within ten days after such designation or [23] designations have been filed, file with the county clerk of such county a surety bond to such county treasurer, properly executed by some reliable surety company qualified under the laws of this State to do business therein, in the maximum amount of deposits designated by said treasurer to be carried in such bank or banks, conditioned for the prompt and faithful payment thereof on checks drawn by such treasurer, which bond must be approved by the chairman of the board of county commissioners, the prosecuting attorney and the county treasurer, or any two of such officers

of said county, before being filed with the county clerk, and unless so approved the same shall not be received or filed by the county clerk: Provided, that said depositary or depositaries may deposit with the county treasurer good and sufficient municipal, school district, county or State bonds or warrants, United States bonds, first mortgage railroad bonds listed on the New York stock exchange, or local improvement bonds or warrants whose legality have been passed upon favorably by the supreme court or public utility bonds or warrants issued by or under the authority of any municipality of the State for water, power or light plants or maintenance thereof upon which principal or interest is not in default at the time of such deposit, the aggregate market value of which shall not be less than the amount required in said deposit, in lieu of the surety bond herein provided for.”

“5075. The county treasurer shall deposit with any depositary or depositaries which have fully complied with all requirements as herein provided, any county moneys in his hands or under his official control, and for the purpose of making the quarterly settlement and counting funds in the hands of the treasurer any such sums so on deposit shall be deemed to be in the county treasury.”

“8327. Whenever any such official bond shall not contain the substantial matter or condition or conditions required by law, or there shall be any defect in the approval or filing thereof, such bond shall not be void so as to discharge such officer and his sureties, but they shall be bound to the State or party

interested, and the State or such party may, by action instituted in any court of competent jurisdiction, suggest the defect of such bond or such approval or filing, and recover his proper and equitable demand or damages from such officer and the person or *sons* who intended to become and were included in such bond as sureties.” (Rem. & Bal. Code.)

Section 5075, above quoted, makes it obligatory upon the county treasurer to deposit with the depository “any county moneys in his hands or under his official control.” The last section quoted is applicable to a bond of a depository, such as the one in suit.

[24]

Board of Commissioners v. Duluth, 77 N. W. 815;

State v. Pederson, 114 N. W. 828;

Henry County v. Salmon, 100 S. W. 20, at 24.

The provisions of section 5073 are solely for the protection of the public and its money and, in so far as the filing of the bond is concerned, it is not a matter for the protection, benefit or advantage of a surety or guarantor such as defendant.

Peoples v. Edwards, 9 Cal. 286;

Deer Lodge County v. U. S. F. & G. Co., 112 Pac. 1060;

Buhrer v. Baldwin, 100 N. W. 469;

Henry County v. Salmon, 100 S. W. 20, at 24.

This being the holding of the Court, it is not necessary to consider the effect of the bond as a common law obligation.

The condition of the bond that,

“If the ‘principal’ \* \* shall well and truly keep all such sums of money so deposited, or to be deposited, as aforesaid, \* \* then this obligation to be void and of no effect.”

must be construed to contemplate all present and future deposits. Any other construction is, necessarily, forced and strained.

Keppart v. Buddecke, 80 Pac. 501;

Myers v. Board of Commissioners, 56 Pac. 11;

Brown v. Board of Commissioners, 50 Pac. 888.

It is true that in *Brown v. Board of Commissioners* (80 Pacific, 501, *supra*) certain recitals of the bond were different from those of the bond in the present case and that the Court in its ruling, to a certain extent, relied upon these different provisions. [25]

It is a well-known rule of construction, both of statutes and written instruments that all the words used must be given a meaning, unless inconsistencies would result therefrom.

If only future deposits were in view, the words would have been “so to be deposited as aforesaid.” If the meaning of the instrument is as contended for by the defendant, the words “so deposited” serve no purpose. The reference to the prior recital, indicated by the use of the words “so” and “aforesaid” could only relate to the terms of the deposit “subject to withdrawal or diminution by said treasurer as the requirements of said county shall demand.”

Under the statutes and authorities cited above, it was not necessary, in order for the bond to become effective, that it be filed with the county clerk. It became an obligation binding upon the defendant



when the bank delivered it to the treasurer and received, on July 13th and 14th, deposits from him under its protection.

In view of the treasurer's testimony that he and the county attorney approved the bond on July 12th, it is not necessary to consider what, if any, effect the want of such approval would have. It is true that the treasurer, in his letter of July 14th to the defendant, says:

“The Prosecuting Atty. refuses to approve any bond carrying the *pro rata* clause.”

If this be construed as meaning that the county attorney had not approved the bond, in view of the treasurer's sworn testimony that the bond had already been approved by both the county attorney and himself on the 12th of July, coupled with the fact that, on the 13th and 14th—immediately after the receipt of the bond, the treasurer made \$8,000 deposits, which he could not legally make without the bond, yet such unsworn misstatement does not justify the [26] rejection of the sworn testimony, supported by such conduct.

The fact that the treasurer disobeyed the direction of the statute and deposited this money before the filing of the bond with the county clerk in no way takes from the presumption that he, as a public officer, did his duty in other respects.

The defendant's contention that, before it became bound, notice to it of the acceptance of the bond by the county was necessary and that no such notice was given yet remains for consideration. It is not neces-

sary to determine the first question, unless, in fact, no such notice was given.

Passing the question of whether or not the defendant is not inconsistent in contending that the treasurer—who, it maintains, had no authority to accept the bond—could reject it, there is no statute requiring notice to the grantor. The treasurer's letter is not a present rejection of the bond.

Although the bond does not purport to run for any particular term, the defendant could not terminate its liability, save upon 30 days notice of its election so to do.

If entirely satisfactory, it was, no doubt, contemplated that the bond should run for months. The provisions for the monthly report by the bank depository to the treasurer, alone show this. But there is nothing in the statute, nor the bond, that obligated the county or the treasurer to accept the bond for a definite term or, once accepted, to retain such bond and not require any other in lieu of it for any definite time. It might hold the bond for a day or a year, or until the next January when it would become the duty of the treasurer to designate a depository.

The pains taken by the treasurer in his letter to point out that, upon receipt of a bond worded to the satisfaction of the county attorney, the bond received and held, would be returned in one of two ways, as the defendant might choose, show that [27] the bond delivered had been accepted for the present, but, as the county and treasurer were not bound to accept it for a definite time, it was accepted

until the imposed conditions were complied with; that, for present purposes, pending negotiations, it would be accepted, but that, unless the imposed conditions were met, it would be rejected.

The letter clearly shows an intention only to reject the bond, by either returning it to the defendant's agent at South Bend, or direct to the defendant in Seattle. This, of itself, is a notice of present acceptance pending negotiations for a more satisfactory bond. It follows that the defendant is liable upon the bond.

In addition to the bonds of guaranty held by the treasurer and county, they held as lawful security for deposits with this bank depository, warrants and local improvement bonds amounting to \$10,519.95.

The stenographer's notes of the testimony have not been extended, for that reason no finding will be now made as to the exact amount for which the defendant is liable under its bond and the *pro rata* provision therein. The Court having held in *Pacific County v. Illinois Surety Company* (cause No. 1962) that there was no liability on the bond involved in that case, if the parties hereto have any difficulty in agreeing upon the extent of the liability under the holdings in that and this suit, they will be further heard.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jun. 17, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [28]



**Decree.**

This cause having come on regularly for trial before the Court sitting without a jury, a trial by jury having been waived by stipulation of the parties in open court, plaintiffs appearing with John I. O'Phelan, prosecuting attorney of Pacific County, Washington, and Bates, Peer & Peterson, their attorneys, defendant appearing by John W. Roberts, Esq., its attorney, and the Court having heard the evidence offered and adduced in behalf of the respective parties, whereupon said cause was argued to the Court by counsel for the respective parties, and the Court having taken the cause under advisement until the 17th day of June, 1916, when the Court being fully advised in the premises filed its written opinion in said cause finding for plaintiffs and against defendant generally, and having reserved its finding as to the exact amount which plaintiffs were entitled to recover under the bond sued on herein for the purpose of further consideration or proof in that respect, if necessary, and thereafter, and on the 13th day of November, 1916, further proof was offered by the respective parties for the purpose of enabling the Court to make a finding as to the exact amount which plaintiffs were entitled to recover herein, and at the conclusion thereof the Court announced orally its finding as to the question of the exact amount which plaintiffs are entitled to recover herein, and now on this day this cause coming on further to be heard upon the motion of John I. O'Phelan and Bates,

Peer & Peterson, attorneys for plaintiffs, for a judgment in accordance with said written opinion heretofore filed herein, and the Court being duly advised in the premises, and it appearing to the Court that said motion should be sustained,

It is by virtue of the premises, and the Findings and Conclusions in said written opinion filed by the Court, as aforesaid,

ORDERED, ADJUDGED AND DECREED that plaintiff Pacific [29] County is a duly organized and existing municipal corporation and political subdivision of the State of Washington.

That J. L. Glazebrook is, and at the times in the complaint in this action mentioned was, the duly elected, qualified and acting county treasurer of said Pacific County, Washington, and that said Pacific County, and said J. L. Glazebrook are, and at all times in the complaint herein mentioned were, residents and citizens of the State of Washington.

That defendant Maryland Casualty Company is, and at the times mentioned in the complaint in this action was, a corporation organized and existing under and by virtue of the laws of the State of Maryland, and is, and was a resident and citizen of the State of Maryland. That it is, and was authorized by its articles of incorporation to engage in business as a surety and guarantor for the acts of third persons for hire, and to do a general surety business, and at the times in the complaint in this action mentioned was authorized to engage in, and was engaged in such business within the State of Washington.

That the amount in controversy in this action, exclusive of costs, amounted to the sum of ten thousand dollars.

IT IS FURTHER ADJUDGED AND DECREED that prior to the 9th day of July, 1915, the First International Bank of South Bend, Washington, was a banking corporation organized and existing under and by virtue of the laws of the State of Washington, and engaged in a general banking business at the city of South Bend, in Pacific County, Washington. That prior to said date plaintiff J. L. Glazebrook, as county treasurer of Pacific County, Washington, had duly designated said First International Bank of South Bend as one of the depositories for the public moneys of Pacific County, Washington, and that on the 9th day of July, 1915, and at all times thereafter to and including the 21st day of July, 1915, said First International [30] Bank acted as such depository.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that on July 12th, 1915, said First International Bank of South Bend delivered to plaintiff J. L. Glazebrook, as county treasurer of Pacific County, Washington, that certain indenture of bond executed by defendant, introduced in evidence in this action marked Exhibit —, a copy of which bond is attached to the complaint on file in this action and marked exhibit "A," which said bond bears date July 9th, 1915, and which said bond had sometime before its delivery to said county treasurer by said First International Bank of South Bend, been de-

livered to said First International Bank of South Bend by the officers and agents of defendant.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said bond was approved by the county treasurer, and county attorney, and thereafter and on the 19th day of July, 1915, filed in the office of the county clerk of Pacific County, Washington.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said First International Bank of South Bend failed to open its doors on Monday July 19th, 1915, and that said bond was not filed with the county clerk until after it was learned that said bank failed to open its doors.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that on Wednesday, July 14th, 1915, plaintiff as county treasurer of Pacific County, Washington, addressed a letter to defendant's general office at Seattle, Washington, and on said date deposited the same in the United States Postoffice at South Bend, Washington, as follows:

“In re Bond of First International Bank.

We have your depository bond for \$10,000 dated July 9th, 1915, in favor of J. L. Glazebrook, County Treasurer.

. The Prosecuting Attorney refuses to approve any bond carrying the *pro rata* clause, and we ask you to kindly give us a bond in which this item is eliminated, or followed by the following: [31]

‘Provided, however, that if such other bonds or securities are insufficient for any reason to fully make, together with the aforesaid proposition under

this bond, the full amount of interest and principal demanded and refused and interest thereafter accruing to time of actual payment to said Treasurer, then and in that event the surety hereunder shall be liable to said Treasurer to the full amount of loss sustained by reason of such insufficiency.'

If you will deliver to your agent here a bond as stated above we will deliver the bond we now have to him and take the new bond in lieu thereof.

If you prefer we promise to return to you immediately the old bond above-mentioned as of July 9th, upon receipt of new bond corrected to read as stated above.

Thanking you for your kindness in the above matter, we are,"—

That it required one day for this letter to reach Seattle, Washington, from South Bend, Washington, but that it was not answered by defendant until after the 19th of July, 1915.

IT IS FURTHER ADJUDGED AND DECREED, that immediately after the receipt of the bond by the treasurer of Pacific County, Washington, he made deposits in the sum of eight thousand dollars, in the First International Bank of South Bend, Washington, which he could not have legally made without the protection of said bond.

IT IS FURTHER ADJUDGED AND DECREED that said bond was accepted by the county treasurer of Pacific County Washington, for present purposes, and until such time as defendant would furnish it a new bond containing the provisions suggested in the county treasurer's letter of July 14th, 1915.



IT IS FURTHER ADJUDGED AND DECREED, that at the time said First International Bank of South Bend, Washington, failed that plaintiffs had on deposit therein, subject to check, the sum of \$52,457.97. That there was on file in the office of the clerk of Pacific County, Washington, in addition to the bond of defendant, sued on herein, bonds of other surety companies aggregating thirty-six thousand dollars. That in addition to said bond sued on herein, and said other thirty-six thousand dollars of surety company bonds there was in the hands of plaintiff J. L. Glazebrook, as treasurer [32] of Pacific County, Washington, a certain lot of miscellaneous warrants, bonds etc., which, together with the interest thereon was of the face value of \$7,567.17, and which have been redeemed by payment of said treasurer of the sum of \$7,567.17.

IT IS FURTHER ADJUDGED AND DECREED that at the time of the failure of said First International Bank of South Bend, Washington, there was also on deposit in the hands of said J. L. Glazebrook, county treasurer, as collateral security for the repayment of deposits in said First International Bank of South Bend, Washington, Local Improvement District Bonds of South Bend, Washington, of the face value of \$2800, and Drainage District warrants of Drainage District No. 2, of Pacific County, Washington, of the face value of \$391.95. That the validity of said Local Improvement District Bonds and of said Drainage District Warrants had not theretofore, and has not since been passed upon by the Supreme Court of the State of Washington.

That said warrants of Drainage District No. 2, of Pacific County, Washington, have no market value whatsoever. That said South Bend Local Improvement District Warrants of the face value of twenty-eight hundred dollars, were sold and disposed of by the County Treasurer of Pacific County, Washington, for the sum of nine hundred and forty-five dollars, which was the reasonable market value thereof, which moneys have been applied by said county treasurer on account of said deposits of \$52,457.97.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the liability of defendant on the bond sued on herein shall be such proportion of said loss of \$52,457.97, as the penalty of said bond, to wit, the sum of ten thousand dollars bears to the total sum of all bonds and securities, to wit, the sum of \$66,519.94.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in arriving at the amount of all bonds and securities given to plaintiffs to secure the deposits in said First International Bank of South [33] Bend, said Drainage District warrants amounting to the sum of \$391.95, and said Local Improvement District Bonds of Aberdeen, Washington, of the face value of \$2800, the validity of which have not been passed upon by the Supreme Court of the State of Washington, are to be taken at their face value.

IN CONSIDERATION OF THE FOREGOING, IT IS ORDERED, ADJUDGED and DECREED that plaintiffs do have and recover of and from defendant judgment in the sum of \$9,281.32, together

with interest thereon at the legal rate from and after the 19th day of July, 1915, and their costs and disbursements herein to be taxed.

To all of which defendant excepts.

By the Court,

EDWARD E. CUSHMAN,

Judge.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Dec. 5, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [34]

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### **Petition for New Trial.**

Comes now Maryland Casualty Company, and moves and petitions the Court to grant a new trial herein, for the following causes materially affecting the substantial rights of said defendant, to wit:

#### **I.**

Insufficiency of the evidence to justify the decision, to wit:

(a) Failure to prove delivery or filing of the bond prior to failure of the bank.

(b) Failure to prove that the bond was approved prior to the time of the failure of the bank.

(c) Failure to prove that the bond was at any time properly approved or filed with the proper authority at any date prior to the failure of the bank.

(d) Failure to prove that the bank had been properly designated as depository.

(e) Failure to prove that moneys were deposited

in the bank subsequent to the approval and filing of the bond.

(f) Failure to prove any loss to the plaintiff for which the Surety Company was in any way liable or responsible. [35]

(g) Failure to prove that plaintiff held any bond of the defendant company at the time of the failure of the bank.

## II.

Error in law occurring at the trial, to wit:

(a) Error of the court in rendering judgment in favor of plaintiff against defendant.

(b) Error in holding that plaintiff held a bond of the defendant.

(c) Error in holding that the bond had been legally approved prior to the failure of the bank.

(d) Error in holding that the bank had been legally designated and selected as depository.

(e) Error in finding and holding that money had been deposited subsequent to the approval and filing of the bond, and in holding that the bond had been legally approved.

(f) Error in holding that there had been any loss sustained by the plaintiff for which defendant Surety Company was in any way liable.

(g) Error in fixing the amount of recovery, in that it was too large.

(h) Error in holding that the defendant Surety Company was liable for any deposits made prior to the date of filing the bond.

(i) Error in reception and rejection of testi-

mony, to which exceptions were duly taken at the time.

JOHN W. ROBERTS,

GEO. L. SPIRK,

Attorneys for Defendant.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division, Dec. 16, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [36]

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**Order Overruling and Denying Motion for New Trial.**

This cause came regularly on to be heard upon the petition or motion for new trial filed herein by the Maryland Casualty Company, plaintiff present by John I. O'Phelan and Bates, Peer & Peterson, attorneys, and defendant Maryland Casualty Company by John W. Roberts, attorney, and the Court having heard the said motion and argument of counsel doth overrule and deny the same, to which ruling the defendant Maryland Casualty Company duly excepts and exception is allowed.

Dated this 16th day of December, 1916.

EDWARD E. CUSHMAN,

Judge.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Dec. 19, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [37]



**Order Extending Time to Serve and File Bill of Exceptions.**

On motion of defendant, Maryland Casualty Company, in the above-entitled cause, it appearing that there is good cause for such action, and upon stipulation of the parties, it is

ORDERED that said defendant have until January 5th, 1917, within which to make, serve and file its bill of exceptions in said cause.

Done in open court this 24th day of November, 1916.

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EDWARD E. CUSHMAN,  
Judge.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 25, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [38]

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**Defendant's Bill of Exceptions.**

BE IT REMEMBERED that heretofore, and on May 24th, 1916, above-entitled cause came regularly on for trial in the above-entitled court, before Honorable E. E. Cushman, Judge presiding; the plaintiff appearing by Bates, Peer and Peterson, and John I. O'Phelan, the defendant, Maryland Casualty Company, appearing by John W. Roberts and George L. Spirk, their attorneys; whereupon the following proceedings were had:

The case was submitted to the Court without jury;

whereupon Mr. Peterson made the following opening statement to the Court:

“Action by Pacific County and Glazebrook, treasurer, vs. Maryland Casualty Company (hereafter called the company) to recover on bond given by First International Bank of South Bend, Washington, in the sum of \$10,000 to secure deposits, and being executed as security by the bank, the bond being given for safe keeping of money by bank. Bond executed 9th day of July, 1915. Nineteenth of same month bank closed its doors. At that time county deposits amounted to \$52,497. Plaintiff prayed judgment for \$10,000. Answer in the main is a general denial, with two affirmative defenses. Application was made about the 9th day of July, and on the 10th or 11th the bond was mailed from Seattle to the bank at South Bend. (1)

WHEREUPON the following facts were admitted. The corporate existence of the parties. That Glazebrook was at all times treasurer of Pacific County. Books in the hands of the bank examiner were books of the bank. It was not admitted that the bank was county depository. That the bank was down until the 16th day of July, 1915, a going banking concern and doing a general banking business at South Bend. That a demand was made upon the defendant. Surety in a demand dated at South Bend, Washington, July 20, 1915. That proof of the claim of Pacific County was duly made to the [39] surety.

**Testimony of J. L. Glazebrook, for the Plaintiff.**

J. L. GLAZEBROOK, a witness on behalf of the plaintiff was duly sworn and testified as follows:

Here an objection was made by Mr. Roberts for defendant upon the ground that the complaint stated no cause of action.

Objection overruled and exception allowed.

“I received the bond on the 12th day of July, 1915, from Mr. Pierson, cashier of the bank.”

It was admitted that John I. O’Phelan was prosecuting attorney of Pacific County, and the signature of O’Phelan and myself were endorsed on the bond on the 12th of July, 1915.

The bond bears the following endorsement: In the Superior Court of Pacific County, Washington, July 19, 1915, C. B. Brown, clerk.

It was admitted that the bond was filed with the clerk on July 19, 1915.

“The bond was not in my possession after July 19, when it was filed with the clerk.”

Bond offered in evidence as Exhibit “3.”

Objection made by defendant and overruled and exception allowed.

“The amount in the bank on the 17th of July, 1915, the time of the failure was \$52,429.24.”

This was admitted to be a correct statement of the amount, but objection was made to its materiality.

Exhibit “4” being proof of claim and statement of daily balances, was here received in evidence.

(Testimony of J. L. Glazebrook.)

“I have been paid in the neighborhood of \$30,000 from other bond companies.”

This evidence was objected to and overruled and exception was allowed. [40]

“There is \$16,686 unpaid at this time; that is, computing interest on it. I was in the bank on the forenoon of July 17; I saw nothing unusual at the time. It was between ten and eleven o’clock. I don’t know whether anybody was cashing checks in there on the 17th or not. I didn’t learn of the bank’s closing until Monday morning. The regular closing hour of the bank on Saturday was twelve o’clock. The bank remained open until noon on Saturday the 17th.” (5-12)

Cross-examination by Mr. ROBERTS.

“The bank did not open on Monday the 19th. It was never opened after Saturday noon, July 17. Some time on Monday, after the closing of the bank Saturday, I filed the bond with the clerk. It has never been in my possession since. I knew the bond had to be filed with the county clerk. I wrote the letter, Exhibit “A.” While I have no independent recollection, I think I mailed it that day, because we always do.” (14-15.)

Letter was introduced as Defendant’s Exhibit “A.”

Objection was made, overruled and exception allowed. (16.)

“I stated in the letter that the prosecuting attorney had refused to approve of the bond. I expected,

(Testimony of J. L. Glazebrook.)

when I wrote the letter that the company would send a new bond. No new bond ever came. I saw O'Phelan on the 19th, the day the bond was filed. I took it up on the 19th with O'Phelan and Richardson. Richardson was deputy. I took it up with the prosecuting attorney's office on the . . .

I told the prosecuting attorney's office on the 19th that I had not yet filed it." (17-18.)

"It's awful hard for me to fix these dates without some date to go by. They came up there, to my office, on the 19th to make proofs of loss against the surety companies." (19.)

Q. "Then after you and the prosecuting attorney went over those securities, you went up and filed this bond of the Maryland Casualty [41] Company with the clerk? A. Yes, sir.

Q. That was after the county attorney had gone over with you, over all the securities you had?

A. Yes, it was in the process of going over the securities, of course."

(19.) "I hold in bonds and securities \$56,000 without the bond of the Illinois Surety which is for \$10,000. If that be added, then I hold \$66,000." (21)

"I have suit pending against Illinois Surety Company for \$10,000. I am giving the principal amounts of securities, without interest." (22)

"I give no notice to the company, except the letter of July 14th. The letter of July 14th constituted the sole and entire notice of any kind which I gave the Surety Company." (23.)



(Testimony of J. L. Glazebrook.)

The bonds and warrants have been mostly cashed."

Here it was admitted that Exhibit "B" was duly served upon Glazebrook upon the date it bears and exhibit "B" was admitted in evidence over objection, and exception allowed. (24.)

#### Redirect Examination.

"I did not file the bond with the clerk because the company had not sent me bond carrying the clause outlined. (25) If I had filed it, and the company sent me the bond carrying the clause outlined, it took an order of court to take this one, (indicating the bond sued on.) It required a cancellation notice of ninety days, and in that event I would have held two bonds against the company for ten thousand dollars each."

"In addition to local improvement bonds and municipal warrants, I had bond with Equitable Surety Company, \$5,000, Fidelity Deposit Company \$20,000, Aetna Accident and Liability Company \$5,000, New Amsterdam \$6,000, Illinois Surety Company \$10,000." (26-27.) [42]

Mr. ROBERTS.—"We cannot be liable for the full amount in this case in any event."

Mr. PETERSON.—"We contend, if there was less than \$50,000 which the treasurer had a right to take then we have a right to recover the full amount, if more than \$50,000 we are entitled to *pro rata* judgment."

Mr. ROBERTS.—"Witness has already stated that he has made some conditional settlement with

(Testimony of J. L. Glazebrook.)

some of the Surety Companies, awaiting the outcome of this suit."

"The amount of securities, including Illinois Surety Company, is \$66,000." (28.)

"I deposited \$4,000 on July 12, and \$4,000 on the 14th." (29.)

Mr. Roberts objected on the ground that the bond could not be made liable for any deposits made prior to July 19. Objection overruled, exception allowed. (29-30.)

Pass-book introduced as Plaintiff's Exhibit "4."

Objection by defendant overruled. (30.)

Subject to objection, it was admitted that the bond of the Illinois Surety Company was dated July 1, 1914, and by its terms made to expire July 1, 1915. (31.)

Bond of Illinois Surety Company offered in evidence. (32.)

Following was admitted over objection of Maryland Casualty Company.

"I was familiar with the terms of the bond of the Illinois Surety Company, and knew when it commenced, and when it expired. And my purpose in getting the bond sued on in this action was to cover deposits, because I had the expiration of the bond of the Illinois Surety Company in mind."

Glazewood was asked whether or not he would have deposited the \$8,000 [43] if he had not had the Maryland Surety Bond.

Objection was made and sustained. (34.)

(Testimony of J. L. Glazebrook.)

Recross-examination.

“The other surety companies paid me, and took a receipt on account of their *pro rata* share of the loss, pending the decision of the courts in these other cases. These payments were made for the purpose of stopping interest, and I issued them receipts on account.” (35.)

Redirect Examination.

“Actions are now pending against other companies. There was no compromise, release or discharge.” (36.)

Mr. Roberts, of counsel for defendant stated:

“I do not claim that our bond was released by payments made to the treasurer by other companies, and his giving them receipts on account. I stipulated that that might be done without prejudice to your legal rights.” (36.)

**Testimony of Roy A. Langley, for Plaintiff.**

ROY A. LANGLEY, called as witness for plaintiff, testified:

“Am special deputy bank examiner. I have the account of Glazewood, treasurer, with bank. July 13, \$4,000, was deposited, and on the 14th \$4,000 was deposited. There were no deposits on the 12th.” (39.)

“The bank’s books do not show a deposit of Four Thousand Dollars on the 12th, but it is the practice if a deposit is made late on one day, after the books are closed, to enter it on the books in the next day’s business.” (39.)

(Testimony of Roy A. Langley.)

Ledger sheet was here produced by the witness. The sheet admitted to be correct, but objection was made to its materiality and objection was overruled and it was admitted as plaintiff's Exhibit "36." (39.)

Exhibit "8" was over objection introduced showing entry on the books of the bank July 17. (41.)

Exhibit "9" were deposit slips showing deposits on July 17. (42.)

Received over objection and exception allowed. Exhibit "10" introduced over objection and exception allowed. Witness was asked the amount of money on deposit when the bank closed its doors. Objection was made and overruled and exception allowed and stated that it was around \$200,000. [44]

#### Cross-examination.

"The \$4,000 deposited on the 14th did not increase the deposits. At the close of business on that day deposits showed a decrease. There was a check for \$4,000 on that day. The next day it still showed a decrease. The first \$4,000 deposited did not increase the bank's liability." (45.)

"The \$4,000 is opposite the 13th of July. It belongs on the line of the 13th of July, but it should not belong there with the balance off on the other line. The only reason I say the \$4,000 is off the line is because I look at the opposite side of the balance." (46.)

"I heard rumor, that money taken in on the 17th was returned. It was understood I have heard

(Testimony of Roy A. Langley.)

people say that deposits were taken and returned, personally, I do not know. The records of the bank show that deposits were received on the 17th and that is all I know about the facts.” (47.)

Above evidence was received over objection.

“I did not go to the bank until about the 26th of July. I could not say when the affairs of the bank will be wound up. It is still indefinite as to when it can be closed.” (48-49.)

#### Redirect Examination.

Mr. PETERSON.—Subject to objection and exception counsel for defendant here admitted that Glazebrook, county treasurer, filed with the Board of County Commissioners of Pacific County a written designation of the bank as county depository on the second Monday of January, 1915.

Mr. ROBERTS.—“Yes, I make no further admission than that Mr. Glazebrook did file with the Board of County Commissioners on the second Monday in January a written designation of this bank as a county depository.”

#### **Testimony of John I. O’Phelan, for Defendant.**

JOHN I. O’PHELAN.

#### Direct Examination.

“I was on July, 1915, and prior thereto prosecuting attorney for Pacific County. John I. O’Phelan, upon the bond is my signature.”

Q. “Mr. O’Phelan, was that put on there before or after the name of [45] J. L. Glazebrook, county treasurer?”

Objection by defendant overruled.



(Testimony of John I. O'Phelan.)

A. "It was filed at the time of Mr. Glazebrook's signature." (52.)

"I recall the failure of the bank. I have not any distinct recollection of the time that this bond was approved, but after listening to Mr. Glazebrook's testimony,"—(interrupted).

Mr. ROBERTS.—"I object to that, if the Court please."

Objection sustained.

The WITNESS.—"I would like to say that I do not think that I approved the bond after the failure of the bank; I do not think I would do it, but I have not any recollection of having approved the bond after the failure of the bank."

Cross-examination.

(By Mr. ROBERTS.)

Q. "Well, now, Mr. O'Phelan, you stated now and I presume that is correct, that you have no recollection as to when you did approve it?"

A. No, sir, I could not say definitely when I did approve it.

Q. But you do remember, however, that when this bond was presented to you that you objected to the form of it?

A. Yes, I have a distinct recollection of that.

Q. And you at that time declined to approve it because it was different in form from the other depository bond?

A. Yes, if I may explain. That is true."

Mr. PETERSON.—Now make your explanation.

A. "The former prosecuting attorney had en-

(Testimony of John I. O'Phelan.)

deavored to procure a uniform bond, and it was with that end in view that I objected to the form of this bond, in that I wished in this bond to have a clause to provide that in case any of the other securities failed, that it would increase the liability of this bond so that the county would not lose by the failure of some securities that were [46] no good." (53-54.)

"The clause which Glazebrook insisted must go into the bond is in substance what I stated must be contained in it." (54.)

"I demanded this for the sake of uniformity in all the bonds. We were trying to get a uniform contract. I sent Mr. Richardson to the office of Mr. Glazebrook after the bank had failed." (55.)

"All I was endeavoring to do was to get a *uniform* of bond, and notwithstanding that without that uniformity being in this bond I approved it." (56.)

**Testimony of J. L. Glazebrook (Recalled).**

J. L. GLAZEBOOK, recalled.

"I did not ascertain whether certain warrants and local improvement bonds held by me as security had been passed upon by the Supreme Court."

The evidence was received over objection and exception allowed.

"I did not mean to say that they had been unfavorably passed upon, simply that I did not know." (59-60.)

Plaintiff rests.

DEFENDANT'S CASE.

**Testimony of Arthur W. Whalley, for Defendant.**

ARTHUR W. WHALLEY.

Direct Examination.

“Live in Seattle. Am agent for casualty department of Maryland Casualty Company. The company writes casualty bonds, likewise surety bonds. The two are written by different agents. My office did not represent the company's surety department. Calhoun, Denny and Ewing were agents in surety department.” (62.)

“I received the letter, Defendant's Exhibit “A,” in Seattle, Saturday afternoon, July 17th. I personally opened the letter and turned it over to Mr. Cathcart because he had been manager of our surety department. Surety offices close in Seattle at one o'clock on Saturdays.”

This evidence was objected to, and exception allowed.

“The letter was received after business hours on Saturday, but [47] I was still present in the office, as was Mr. Cathcart. The letter was delivered to Calhoun, Denny and Ewing, the Surety Agents, on Monday following. It was delivered to Mr. Cran at Calhoun, Denny & Ewing's office.” (63-64.)

“No, myself nor my office does not represent the Maryland Casualty Company in the surety department; when I said Cathcart was surety manager, I meant for another company; the Fidelity and Deposit Company.” (64-65.)

**Testimony of John N. Cran, for Defendant.**

JOHN N. CRAN.

"Calhoun, Denny and Ewing, in July, 1915, were agents of the surety department of Maryland Casualty Company, writing surety bonds and I was with Calhoun, Denny and Ewing. The bond in question, here, was written in Seattle in the office of Calhoun, Denny and Ewing." (65.)

Witness was handed letter, Plaintiff's Exhibit "A."

"I received that letter on Monday forenoon from Mr. Cathcart of Mr. Whalley's office; Monday forenoon, July 19. I never saw the letter prior to that time, and it did not come into my possession or the possession of Calhoun, Denny and Ewing, the surety agents' possession prior to that time." (66.)

Here counsel for defendant tried to prove by the witness, and then made formal offer to prove by the witness that the company carries the *pro rata* clause in all its depository bonds, and would not write any bond that did not carry that clause.

Objection was made and sustained, exception allowed.

Counsel then offered to prove by the witness that the request made by Glazebrook in the letter exhibit "A" would not have been granted, and that the company would not have changed nor modified the bond in any particular.

Objection sustained and exception. [48]

"The company received no premium for writing the bond." (66-67.)

(Testimony of John N. Cran.)

“Whalley’s office is not in the same building with the office of Calhoun, Denny and Ewing. The bond was mailed from Seattle to Pearson, cashier of the bank at South Bend.” (67.)

“The surety office of Calhoun, Denny and Ewing was closed Saturday afternoon, the 17th. I am not with Calhoun, Denny and Ewing now, nor with the Maryland Casualty Company. The bond was brokered to Calhoun, Denny and Ewing from John A. Whalley, who writes for the Fidelity & Deposit Company of Maryland. The notice from Glazebrook at South Bend instead of going to the office of Calhoun, Denny and Ewing went to the office of John A. Whalley & Company.” (68.)

**Testimony of Arthur Whalley, for Defendant.**  
**(Recalled).**

ARTHUR WHALLEY, recalled.

“Our office brokered this bond to the Calhoun, Denny and Ewing office. It wasn’t written in the Fidelity & Deposit Company because the line was full.” (69.)

“I presume that our office delivered the bond to Pearson personally; I could not say.” (70.)

**Testimony of C. O. Bates, for Defendant.**

C. O. BATES, called by defendant.

“Attorney at law. Partner of Mr. Peterson, a counsel in this case.”

Witness then was asked if his firm was appearing



(Testimony of C. O. Bates.)

in this case as counsel for the Fidelity & Deposit Company of Maryland.

Objection was made.

Counsel for defendant company offered to show that the Fidelity & Deposit Company was on the depository bond for \$20,000 and that in addition thereto the Fidelity & Deposit Company was on the personal bond of Glazewood, treasurer, and that because of these interests the Fidelity & Deposit Company were employing counsel to defend this case, and that the Fidelity & Deposit Company had declined [49] to pay until such time as it could compel the Maryland Casualty Company to pay.

The objection was sustained by the Court and exception allowed.

Then counsel for the Maryland Company offered to prove by this witness that he and his partner were employed in the case by the Fidelity & Deposit Company of Maryland the same company which is on the bond of the bank for \$20,000 and likewise on the personal bond of Glazebrook as treasurer and that they appeared in this cause only as counsel for Fidelity & Deposit Company.

An objection was made to the offer and sustained.

Further hearing was had in the case by the Honorable E. E. Cushman, Judge; appearance as before.

It was admitted without admitting the validity of Maryland bond that the following is a list of securities held by Glazebrook, treasurer:

(Testimony of C. O. Bates.)

The Fidelity & Deposit Co....\$20,000

The Aetna Accident & Liabil-

ity Co. .... 5,000

Equitable Surety Co. .... 5,000

New Amsterdam Casualty Co. 6,000

The Maryland Casualty Co. ... 10,000

Municipal Bonds & Mort-

gages ..... 10,525.65 (74)

Counsel for plaintiff offered in evidence complaint, demurrer, order and judgment of the Court sustaining the demurrer to plaintiff's complaint against Illinois Surety Company; to this counsel for defendant objected and the objection was overruled. (75.)

Counsel for plaintiff stated that the Illinois Surety Bond expired July 1, 1915, and that the Court had held that the liability of the Illinois Surety expired on July 1, 1915. (76.)

But the counsel for defendant stated that the bond was in effect at the time the majority of the monies were deposited in the bank. (77.) [50]

Here counsel for plaintiff asked Glazebrook what other securities he held, over and above the Surety Bonds, to which counsel for the defendant objected upon the ground that the only thing material was the amount of such securities.

Objection overruled and exception reserved. (77.)

Then counsel for plaintiff stated that Glazebrook held local improvement bonds of the city of South Bend \$2800 the validity of which had not been passed upon by the Supreme Court, and that such bonds

(Testimony of J. L. Glazebrook.)

could not be taken at their face value.

The COURT.—“Can the county sell its securities at a discount?”

**Testimony of J. L. Glazebrook, for Plaintiff  
(Recalled).**

GLAZE BROOK testifies:

“I had warrants on various county and city funds, \$7,328; South Bend local improvement bonds, 2,888. Total \$10,519.95. The warrants have all been sold and the proceeds applied on the deposit. These warrants which have been sold and applied on the deposit amount to \$7,328.” (79.)

“I have drainage district warrants \$391.95. Their validity is in question. I have been unable to dispose of them at any price.” (79.)

“The \$2,800 on districts 98 and 96, South Bend; I sold the \$2,100 for 15¢ and the \$700 for 90¢. I made no investigation as to whether or not the validity of these warrants had been passed upon by the Supreme Court.” (82.)

“I did not request any lawyer to make the investigation.” (83.)

**Cross-examination.**

“The face value of all the municipal bonds was \$10,519.95. They are all bonds or negotiable instruments which provide for a certain definite, fixed sum of money. I do not contend that I sold any of these improvement bonds at a discount because of their invalidity.” (83.) [51]

(Testimony of J. L. Glazebrook.)

“I did not mean to say that they had been declared invalid. I remember Mr. Spirk being down to South Bend. I remember writing the letter introduced as exhibit ‘A.’ ”

Witness was asked if he did not tell Mr. Spirk that he did not approve the bond at the date he wrote the letter. (84.)

Objection was made to this question, and there was discussion and argument, in the course of which the following:

The COURT.—“I think there was a date on it, about when it was to be approved.”

Mr. ROBERTS.—“But that was the 19th, after the bank closed, and of course it could not be liable for any sum if it was approved that day.”

WHEREUPON, the Court decided to receive the evidence for the purpose, only, of throwing light upon the date of approval of the bond or for fixing the day when the bond became liable. (85.)

A. “No, sir, I did not make any such statement.

Q. You made no statement of that sort to him?

A. No, sir.”

Objection was made and overruled and exception allowed. (86.)

**Testimony of John I. O’Phelan, for Defendant.**

JOHN I. O’PHELAN, is asked if he ever investigated as to whether the \$2,800 of local improvement bonds had been passed upon by the Supreme Court.

Objection was made, and overruled and exception allowed.

(Testimony of John I. O'Phelan.)

Witness answered, he had, then stated that in his judgment the validity of the bonds had not been before the Supreme Court before the assessment-roll had been passed upon by the Supreme Court.

In the case of Vincent vs. South Bend, 84 Washington, 314.

Objection was made and overruled and exception allowed. (87.)

Witness stated in his opinion the validity of the \$391.95 issue had not been before the Supreme Court; this was likewise over-objectioned. [52]

#### Cross-examination.

Witness was handed the decision of the Supreme Court of Washington in Vincent vs. South Bend, 84 Washington, 314, and asked if the objectors did not raise every question in that case that they could raise, and stated that as he understood the history of the case and the decision of the Court, the contest was over the validity of the assessment-roll. (88.)

It was tide-land fill and a great many properties or property owners were included and there was a long list of objectors. Their objections were overruled and they took the case to the Supreme Court. (89.)

#### **Testimony of George L. Spirk, for Defendant.**

GEORGE L. SPIRK, testified.

"Went to South Bend to investigate failure of bank; while there had a talk with Glazebrook; in the conversation I asked him the date when he claimed to have approved the bond."



(Testimony of George L. Spirk.)

Objection was made, and overruled and exception allowed.

“I had a talk with him on the 23d of July, 1915. The bank examiner took charge, on Saturday, the 17th, and I was down there on the 23d, and the bank did not open on the 19th for business. I asked him, at that time, when the bond had been approved, and his statement to me bore out what his deputy had told me when I was down there on the 23d, and he said it was after the letter was written. I called his attention specifically to the letter, and he said it was after he wrote the letter, two or three days after the date of the letter, or thereabouts. In any event, it was after the letter was written by several days, that the bond was first approved.” (91.)

Cross-examination.

“I reported all these matters to Mr. Roberts before the trial. I have been in the State all of the time. I knew the bond was not [53] filed with the clerk until after the failure of the bank, and that was the very reason I wanted to find out when the bond was approved.” (92.)

**Testimony of J. L. Glazebrook, for Defendant  
(Recalled).**

GLAZEBROOK, recalled.

“Including interest to date of the closure of the bank, I had on deposit, \$52,457.97. There has been no dividend declared. The County has received no money from the receiver.” (93.)

(Testimony of J. L. Glazebrook.)

The COURT.—“I find the liability to be \$52,-457.97, amount on deposit 17th of July. I eliminate the Illinois Surety Company. I hold that the face of all bonds, municipal, local improvement, warrants and district bonds are to be included at their face with the face of the various surety company bonds, exclusive of Illinois Surety in determining the *pro rata* liability. Liability on this bond is a matter of interpretation of a contract.” (94.)

“If you include amount realized on securities which treasurer had no business taking, there would be no way—you would be just chasing around in a circle. There would be no possibility of the liabilities being settled.”

Mr. ROBERTS.—“The way I understand it, no amount was fixed, at the former hearing, and the whole matter will date from the entry of the decree now, if we want to appeal; I want no misunderstanding about that—no decree of any kind has ever been entered?”

Mr. PETERSON.—“No sir.”

BE IT FURTHER REMEMBERED, that in due time defendant submits the foregoing as its proposed bill of exceptions herein, and prays that the same may be settled and allowed.

Dated this 4 day of January, 1917. [54]

JOHN W. ROBERTS,  
GEO. L. SPIRK,  
Attorneys for Defendant.

The foregoing bill of exceptions is presented in due time and is true and correct and the same may be settled and filed.

JOHN I. O'PHELAN,  
BATES & PETERSON,

Attorneys for Plaintiff.

Now, on this 23 day of February, 1917, this cause coming regularly on to be heard on the application of the defendant to have its proposed Bill of Exceptions settled, signed, filed and made of record in said cause, the parties hereto appearing by their respective counsel, and it appearing to the Court that the foregoing Bill of Exceptions contains all the facts upon which said cause was tried before the undersigned presiding Judge upon the trial of said cause, and all the evidence and testimony offered upon the trial of said cause, and all objections made by counsel for the respective parties to the receiving or rejection of said evidence offered, and all the motions and the rulings of the Court thereon, and all exceptions taken at the time thereto, the said Bill of Exceptions has been examined and found correct, and contains all the material facts matters and proceedings, not already a part of the record in said cause, and is hereby settled, signed and ordered filed and made a record herein, all of which is accordingly done by the undersigned, the judge before whom the said cause was tried.

EDWARD E. CUSHMAN,

Judge of the United States District Court for the  
Western District of Washington, Southern Di-  
vision. [55]

[Endorsed]: Defendant's Bill of Exceptions. Filed in the U. S. District Court Western Dist. of Washington, Southern Division, Jan. 4, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

Refiled as amended and certified in the U. S. District Court, Western Dist. of Washington, Southern Division, Feb. 23, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [56]

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### **Petition for Writ of Error.**

Now comes Maryland Casualty Company, defendant herein, and says:

That on the 5th day of December, 1916, this Court entered a decree herein, in which decree and the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of this defendant, and of which more in detail appears from the assignment of errors which is filed with this petition.

WHEREFORE, the defendant prays that a Writ of Error may issue in this behalf out of the United States Circuit Court of Appeals, Ninth Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause duly authenticated may be sent to the United States Circuit Court of Appeals.

JOHN W. ROBERTS,

GEO. L. SPIRK,

Attorneys for Defendant. [57]

Filed in the U. S. District Court Western Dist. of Washington, Southern Division, Jan. 4, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [58]

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### **Assignment of Errors.**

Comes now Maryland Casualty Company, a corporation, defendant, and assigns errors in the trial, decisions, rulings, orders and decree of the Honorable District Court in said cause, as follows:

1. The Honorable District Court erred in rendering judgment in favor of the plaintiff and against the defendant.

2. In holding, deciding and decreeing that the bond was a valid and binding obligation and in holding that said bond ever became the binding obligation of the defendant.

3. In holding and deciding that said bond became effective prior to July 19th, 1915, and in holding that said bond became effective as such prior to the date of its filing.

4. In holding and deciding that said bond had been legally and properly approved prior to the 19th day of July, 1915.

5. In holding and decreeing that said bond and the surety thereon was liable for moneys deposited in the bank prior to the execution and filing of the bond.

6. In holding and decreeing that said bond and the surety were liable for two deposits made on the 13th and 14th days of July, or any part of such deposits.



7. In holding and decreeing that said bond was liable in any event for more than its proportion of moneys deposited after July 12th, 1915, and in holding that said bond was liable for any of the moneys deposited after July 12th.

8. The Court erred in receiving any evidence touching any alleged loss of the plaintiff upon any date prior to the 18th day of July, 1915, and erred in receiving the evidence of Glazebrook, the plaintiff, that he deposited moneys in the bank on the 13th and 14th days of July, 1915. [59]

9. The Court erred in entering decree in favor of the plaintiff instead of entering decree in favor of the defendant.

10. The Court erred in overruling and denying the motion and petition of defendant for a new trial.

WHEREFORE, defendant prays that said judgment of the said Honorable District Court of the United States for the Western District of Washington, Southern Division, be reversed.

Dated this 4th day of January, A. D. 1917.

JOHN W. ROBERTS,  
Attorney for Defendant.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jan. 4, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [60]

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### **Order Allowing Writ of Error.**

On this 4th day of January, 1917, comes the defendant, by its attorneys, and files herein and pre-

sents to the Court its petition praying for the allowance of a writ of error, an assignment of errors intended to be urged by them, praying also that a transcript of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

ON CONSIDERATION WHEREOF, the Court does allow the writ of error upon defendant giving bond according to law in the sum of two hundred fifty dollars (\$250), which will operate as a bond for costs.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Order Allowing Writ of Error. Filed in the U. S. District Court, Western District of Washington, Southern Division, January 4, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [61]

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**Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS, that Maryland Casualty Company of Baltimore, Maryland, a corporation, defendant herein, as principal, and the United States Fidelity and Guaranty Company, a corporation, as surety for and on behalf of said Maryland Casualty Company are held and firmly bound unto PACIFIC COUNTY, a municipal corporation and one of the Counties of the State

of Washington, and J. L. Glazebrook, as county treasurer of said Pacific County, the plaintiffs herein, in the full and penal sum of twelve thousand dollars (\$12,000) to be paid to the said Pacific County, a municipal corporation and one of the counties of the State of Washington, and J. L. Glazebrook, as county treasurer of said Pacific County, their attorneys successors or assigns, to which payment well and truly to be made, we bind ourselves, our assigns, and successors, jointly and severally and firmly by these presents. [62]

Sealed with our seals, and dated this 5th day of January, in the year of our Lord, one thousand nine hundred and seventeen.

The condition of this obligation is such, that

WHEREAS, in the District Court of the United States for the Western District of Washington, Southern Division in the suit pending in said court between Pacific County, a municipal corporation, one of the counties of the State of Washington, and J. L. Glazebrook, as county treasurer of said Pacific County, plaintiffs, vs. Maryland Casualty Company, defendant, a judgment was rendered in favor of the plaintiffs and against the defendant and the defendant Maryland Casualty Company having obtained from said Court a Writ of Error to reverse said judgment in the above-entitled cause, and a Citation directed to said Pacific County, a municipal corporation, and one of the counties of the State of Washington, and J. L. Glazebrook, as county treasurer of said Pacific County, citing and admonishing them to be and appear in the United States Circuit

Court of Appeals for the Ninth Circuit, to be held in the city of San Francisco, in the State of California.

NOW, THEREFORE, if the above-named defendant, Maryland Casualty Company shall prosecute, said Writ of Error to effect and answer all damages and costs, if it shall fail to make good its plea then the above obligation to be void; otherwise remain in full force and effect.

MARYLAND CASUALTY COMPANY.

By JOHN W. ROBERTS,

Attorney.

UNITED STATES FIDELITY & GUAR-  
ANTY CO.

By JOHN C. McCOLLISTER,

Its Attorney in Fact.

[Corporate Seal of the United States Fidelity &  
Guaranty Company.] [63]

The above and foregoing bond approved this 11th day of Jan., A. D. 1917.

EDWARD E. CUSHMAN,

District Judge.

Filed in the U. S. District Court Western Dist. of Washington, Southern Division. Jan. 11, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [64]

*In the United States District Court for the Western  
District of Washington, Southern Division.*

No. 1949.

PACIFIC COUNTY, WASHINGTON,  
Plaintiff,

vs.

MARYLAND CASUALTY COMPANY, a Corpora-  
tion,  
Defendant.

**Stipulation for Removal of Certain Exhibits.**

IT IS HEREBY STIPULATED by and between the parties hereto, through their respective attorneys, that the following original exhibits filed in the above-entitled court in this case may be forwarded to the clerk of the Circuit Court of Appeals in the appeal of the above-entitled cause as part of the record thereof:

Plaintiff's Exhibits #5 and #6.

Plaintiff's Exhibits #8, #9 and #10.

Dated this 9th day of January, 1917.

JOHN I. O'PHELAN,  
BATES & PETERSON,  
Attorneys for Plaintiffs.  
JOHN W. ROBERTS,  
Attorney for Defendant.

Filed in the U. S. District Court Western Dist. of Washington, Southern Division. Jan. 11, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [65]



**Stipulation.**

IT IS HEREBY STIPULATED that the bond of the Illinois Surety Company, Plaintiff's Exhibit No. 5; Ledger Sheet, Plaintiff's Exhibit No. 6; Entries July 17th, Plaintiff's Exhibit No. 8; Deposit Slips, Plaintiff's Exhibit No. 9; and Journal, Plaintiff's Exhibit No. 10, need not be printed in the record.

Dated this 4th day of January, 1917.

JOHN I. O'PHELAN,

BATES, PEER & PETERSON,

Attorneys for Plaintiff.

JOHN W. ROBERTS,

GEORGE L. SPIRK,

Attorneys for Defendant.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jan. 4, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [66]

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**Acceptance of Service.**

We the undersigned attorneys for the plaintiff, Pacific County, a municipal corporation and one of the counties of the State of Washington, and J. L. Glazebrook, as treasurer of said Pacific County, do hereby admit service and receipt of copies of the petition for Writ of Error, Assignment of Errors, Order Allowing Petition for Writ of Error, Bond on Writ of Error, Writ of Error, and Citation on Writ of Error, and do hereby waive any other or further service of said matters.

Dated at Seattle, Washington, this 4 day of January, A. D. 1917.

JOHN I. O'PHELAN,  
BATES, PEER & PETERSON,  
Attorneys for Plaintiff. [67]

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jan. 4, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [68]

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**Certificate of Clerk U. S. District Court to Transcript  
of Record.**

United States of America,  
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return that the foregoing is a true and correct copy of the record and proceedings in the case of the Pacific County, a municipal corporation and one of the counties of the State of Washington, and J. L. Glazebrook, as county treasurer of said Pacific County, Plaintiffs, versus Maryland Casualty Company, a Corporation of the State of Maryland, Defendant, as required by praecipe of counsel filed and shown herein, and as the originals thereof appear on file and of record in my office in said District at Tacoma; and that the same constitutes my return on the annexed Writ of Error herein.

I further certify and return that I hereto attach and herewith transmit the original Writ of Error

and original Citation, together with original Order Extending Time to File Return on Writ of Error; and that, under separate cover, duly certified, I am transmitting herewith the original exhibits called for in Stipulation of Counsel for removal of same herein.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and charges as incurred and paid in my office by and on behalf of the plaintiff in error herein, for making record, certificate and return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:— [69]

Clerk's fees (Sec. 828, R. S. U. S.) for	
making record, certificate and re-	
turn, 159 folios at 15¢ each.....	\$23.85
Certificate of Clerk to Transcript, 3	
folios at 15¢ each.....	.45
Seal to said Certificate .....	.20
Certificate and Seal to original ex-	
hibits, 1 folio .....	.35

ATTEST my hand and the seal of said District Court at Tacoma, in said District, this 28th day of February, A. D. 1917.

[Seal]

FRANK L. CROSBY,  
Clerk.

By F. M. Harshberger,  
Deputy Clerk. [70]

*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

No. 1949.

MARYLAND CASUALTY COMPANY, a Corpora-  
tion of the State of Maryland,

Plaintiff in Error,

vs.

PACIFIC COUNTY, a Municipal Corporation and  
One of the Counties of the State of Washing-  
ton, and J. L. GLAZEBROOK, as County  
Treasurer of Said Pacific County,

Defendants in Error.

**Writ of Error.**

United States of America,  
Ninth Judicial Circuit,—ss.

The President of the United States of America to  
the Honorable Judges of the District Court of  
United States for the Western District of Wash-  
ington, Southern Division, GREETING:

Because in the record and proceedings, as also in  
the rendition of the judgment of a plea which in said  
Circuit Court of Appeals before you, or some of you,  
between Maryland Casualty Company, a corpora-  
tion of the State of Maryland, Plaintiff in Error, and  
Pacific County, a Municipal Corporation and one of  
the Counties of the State of Washington, and J. L.  
Glazebrook, as County Treasurer of said Pacific  
County, Defendants in Error, a manifest error hath  
happened to the great damage of said Maryland

Casualty Company, a corporation of the State of Maryland, Plaintiff in Error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, State of California, in said Circuit, within thirty (30) days from date hereof, in said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable E. D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 4th day of January, A. D. 1917.

Attest:

[Seal] FRANK L. CROSBY,  
Clerk of the United States District Court for the  
Western District of Washington.

By F. M. Harshberger,  
Deputy.

The foregoing Writ is hereby allowed.

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Judge.



[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Maryland Casualty Company, etc., Plaintiff in Error, vs. Pacific County, a Municipal Corporation, etc., Defendants in Error. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jan. 4, 1917. Frank L. Crosby, Clerk. F. M. Harshberger, Deputy.

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*In the United States Circuit Court of Appeals, for  
the Ninth Circuit.*

MARYLAND CASUALTY COMPANY, a Corporation, of the State of Maryland,  
Plaintiff in Error,  
vs.

PACIFIC COUNTY, a Municipal Corporation and  
One of the Counties of the State of Washington, and J. L. GLAZEBROOK, as County  
Treasurer of Said Pacific County,  
Defendants in Error.

**Citation.**

United States of America,—ss.

The President of the United States, to Pacific County, a Municipal Corporation and One of the Counties of the State of Washington, and J. L. Glazebrook, as County Treasurer of Said Pacific County, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the City

of San Francisco, in the State of California, within thirty (30) days from the date hereof, pursuant to a Writ of Error duly issued and now on file in the office of the clerk of the United States District Court for the Western District of Washington, Southern Division, wherein Maryland Casualty Company, a corporation of the State of Maryland, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why so much of the judgment rendered against the said plaintiff in error as in said Writ of Error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable E. D. WHITE, Chief Justice of the Supreme Court of the United States, this 4th day of January, 1917.

[Seal]

EDWARD E. CUSHMAN,  
United States District Judge.

[Endorsed]: No. — United States Circuit Court of Appeals, for the Ninth Circuit. Maryland Casualty Company, etc., Plaintiff in Error, vs. Pacific County, a Municipal Corporation, etc., Defendants in Error. Citation. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jan. 4, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

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[Endorsed]: No. 2947. United States Circuit Court of Appeals for the Ninth Circuit. Maryland Casualty Company, a Corporation of the State of Maryland, Plaintiff in Error, vs. Pacific County,

a Municipal Corporation, and one of the Counties of the State of Washington, and J. L. Glazebrook, as County Treasurer of said Pacific County, Defendants in Error, Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Southern Division.  
Filed March 3, 1917.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

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*In the United States Circuit Court of Appeals, for  
the Ninth Circuit.*

No. —

MARYLAND CASUALTY COMPANY, a Corporation,

Plaintiff in Error,

vs.

PACIFIC COUNTY, a Municipal Corporation, of the State of Washington, and J. L. GLAZEBROOK, as County Treasurer,

Defendants in Error.

**Order Extending Time to File Return on Writ of Error.**

For a good cause shown, IT IS NOW ORDERED That the time within which the Transcript on appeal and return of the clerk of the United States District Court to the Writ of Error herein may be returned

and filed in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, be, and the same is hereby enlarged and extended to and including the 5th day of March, A. D. 1917.

Dated January 31st, 1917.

EDWARD E. CUSHMAN,  
U. S. District Judge for the Western District of  
Washington.

[Endorsed]: No. — In the United States Circuit Court of Appeals, for the Ninth Circuit. Maryland Casualty Company, Plaintiff in Error, vs. Pacific County et al., Defendants in Error. Order Extending Time to File Return on Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jan. 31, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

